

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **FOR THE**  
3                                   **EASTERN DISTRICT OF PENNSYLVANIA**

4   STEPHEN DELOZIER,                                   )

5                                   Plaintiff                                   )

6                                   v.                                   )

7                                   NCO FINANCIAL SYSTEMS, INC.,                                   )

8                                   Defendant                                   )

9                                   **Case No.: 2:10-CV-07246-JD**

10                                   **COMPLAINT AND DEMAND FOR**  
11                                   **JURY TRIAL**

12                                   **(Unlawful Debt Collection Practices)**

13                                   **COMPLAINT**

14                   STEPHEN DELOZIER ("Plaintiff"), by his attorneys, KIMMEL & SILVERMAN, P.C.,  
15                   files this complaint against NCO FINANCIAL SYSTEMS, INC. ("Defendant"), and alleges the  
16                   following:

17                                   **INTRODUCTION**

18                   1.     Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15  
19                   U.S.C. § 1692 *et seq.* ("FDCPA"), which prohibits debt collectors from engaging in abusive,  
20                   deceptive, and unfair practices and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et*  
21                   *seq.* ("TCPA"). Plaintiff further alleges a claim for invasion of privacy ancillary to Defendant's  
22                   collection efforts.

## JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before “any appropriate United States district court without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business and has an office in the Commonwealth of Pennsylvania, and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

## PARTIES

6. Plaintiff is a natural person residing in Media, Pennsylvania 19063.

7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

## PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties.

1 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
2 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
3 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
4 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
5 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
6 unconscionable conduct, both generally and in a specific list of disapproved practices.

7  
8 12. In particular, the FDCPA broadly enumerates several practices considered  
9 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
10 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
11 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
12 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
13 collector may not use any false, deceptive, or misleading representation or means in connection  
14 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
15 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
16 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
17 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
18 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
19 connection with the collection of a debt.

20  
21 13. In enacting the FDCPA, the United States Congress found that “[t]here is  
22 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
23 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
24 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
25

1 additionally found existing laws and procedures for redressing debt collection injuries to be  
2 inadequate to protect consumers. 15 U.S.C. § 1692b.

3 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
4 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
5 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
6 collection practices are not competitively disadvantaged, and to promote consistent State action  
7 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
8

### 9 10 **FACTUAL ALLEGATIONS**

11 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
12 debt from Plaintiff.

13 16. The alleged debt at issue arose out of transactions, which were primarily for  
14 personal, family, or household purposes.

15 17. Beginning on or around March or April 2010 and continuing until February 2011,  
16 Defendant, its agents, employees, and servants, repeatedly and continuously contacted Plaintiff  
17 on his cellular telephone in an attempt to collect a debt.

18 18. On numerous occasions, Defendant contacted Plaintiff on his cellular phone using  
19 automated telephone equipment.  
20

21 19. Defendant placed repeated calls to Plaintiff’s cellular phone almost every day for  
22 at least a year.

23 20. Further, when contacting Plaintiff on his cellular telephone, upon information and  
24 belief, Defendant used an automatic telephone dialing system or pre-recorded or artificial voice.

25 21. Plaintiff did not expressly consent to Defendant’s placement of telephone calls to

1 his cellular telephone by the use of an automatic telephone dialing system or a pre-recorded or  
2 artificial voice prior to Defendant's placement of the calls.

3 22. None of Defendant's telephone calls placed to Plaintiff were for "emergency  
4 purposes," as specified in 47 U.S.C. §227(b)(1)(A).

5 23. Within five days of his initial communication with Defendant, Plaintiff did not  
6 receive a letter notifying him of his rights to dispute the debt and/or seek validation of the debt.

7 24. Further, Defendant failed to provide any documentation detailing the purchases,  
8 payments, interest and late charges, if any, thereby making it impossible for Plaintiff to  
9 determine whether this was a valid debt and whether or not he owes the alleged debt.  
10

11 25. Upon information and belief, Plaintiff does not owe any debts.

12 26. Defendant's actions in attempting to collect the alleged debt were harassing, and  
13 highly deceptive.  
14

### 15 THE FAIR DEBT COLLECTION PRACTICES ACT

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17 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
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19 violates its provisions, and establishes general standards of debt collector conduct, defines  
20 abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions  
21 of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful  
22 and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
23 unconscionable conduct, both generally and in a specific list of disapproved practices.  
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13 29. In enacting the FDCPA, the United States Congress found that “[t]here is  
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15 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
16 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
17 additionally found existing laws and procedures for redressing debt collection injuries to be  
18 inadequate to protect consumers. 15 U.S.C. § 1692b.  
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20 30. Congress enacted the FDCPA to regulate the collection of consumer debts by  
21 debt collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
22 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
23 collection practices are not competitively disadvantaged, and to promote consistent State action  
24 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.  
25

31. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &

1 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
2 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
3 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
4 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
5 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

6  
7 32. The FDCPA is a remedial statute, and therefore must be construed liberally in  
8 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
9 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
10 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the  
11 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
12 construed liberally in favor of the consumer." Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
13 2002).

14 33. The FDCPA is to be interpreted in accordance with the "least sophisticated"  
15 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
16 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
17 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not "made for the protection of experts, but for  
18 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
19 and the fact that a false statement may be obviously false to those who are trained and  
20 experienced does not change its character, nor take away its power to deceive others less  
21 experienced." Id. The least sophisticated consumer standard serves a dual purpose in that it  
22 ensures protection of all consumers, even naive and trusting, against deceptive collection  
23 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
24 collection notices. Clomon, 988 F. 2d at 1318.  
25



**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

34. In 1991, Congress enacted the TCPA, in response to a growing number of consumer complaints regarding certain telemarketing practices.

35. The TCPA regulates, among other things, the use of automated telephone equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

36. According to findings by the Federal Communication Commission ("FCC"), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.

37. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the "prior express consent" of the called party. The FCC "emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed."



**COUNT I**  
**DEFENDANT VIOLATED ‘**  
**THE FAIR DEBT COLLECTION PRACTICES ACT**

38. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

- a. Defendant violated of the FDCPA generally;
- b. Defendant violated § 1692d of the FDCPA by harassing Plaintiff in connection with the collection of an alleged debt;
- c. Defendant violated § 1692d(5) of the FDCPA, when it caused the Plaintiff's telephone to ring repeatedly or continuously with the intent to harass, annoy or abuse Plaintiff;
- d. Defendant violated § 1692e of the FDCPA by using false, deceptive, or misleading representations or means in connection with the collection of a debt;
- e. Defendant violated § 1692e(10) of the FDCPA by using false representations or deceptive means to collect or attempt to collect a debt;
- f. Defendant violated § 1692f of the FDCPA by using unfair and unconscionable means with Plaintiff to collect or attempt to collect a debt;
- g. Defendant violated § 1692g of the FDCPA by failing to send written notification, within five (5) days after its initial communication with Plaintiff, advising Plaintiff of her rights to dispute the debt or request verification of the debt;
- h. Defendant acted in an otherwise deceptive, unfair and unconscionable manner and failed to comply with the FDCPA.

COUNT II

**DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

40. Plaintiff hereby incorporates all facts and allegations specified in all preceding paragraphs, by reference as if fully set forth at length.

41. Section 227(b)(3)(A) of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation.”

42. Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person or entity to bring in an appropriate court of that state “an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater.”

43. Defendants repeatedly placed calls to Plaintiff’s cellular telephone almost everyday, causing Plaintiff to receive, at times, more than two (2) collection calls a day and at times, more than ten (10) collection calls a week.

44. Defendants’ conduct violated § 227(b)(1)(A)(iii) of the TCPA by making any call using any automatic telephone dialing system or an artificial prerecorded voice to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

45. The Act also authorizes the Court, in its discretion, to award up to three (3) times the actual damages sustained for violations.

1 WHEREFORE, Plaintiff, STEPHEN DELOZIER, respectfully pray for a judgment as  
2 follows:

- 3 a. Declaratory judgment that Defendants conduct violated the FDCPA and  
4 TCPA;  
5 b. Actual damages;  
6 d. Statutory damages;  
7 e. Costs and reasonable attorney's fees; and  
8 f. Any other relief deemed appropriate by this Honorable Court.  
9

10 **DEMAND FOR JURY TRIAL**

11 PLEASE TAKE NOTICE that Plaintiff, STEPHEN DELOZIER, demands a jury trial in  
12 this case.

13 RESPECTFULLY SUBMITTED,

14  
15 DATED: 5/13/11

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